

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

TROY RODDY

PLAINTIFF

v.

2:14CV00057-JM-JJV (LEAD)
2:14CV00061-JM-JJV (CONSOL)

Correctional Medical Services; *et al.*

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge James M. Moody, Jr. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in a waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a new hearing for this purpose before either the District Judge or Magistrate Judge, you must, at the time you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence to be proffered at the new hearing (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The details of any testimony desired to be introduced at the new hearing in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial

evidence desired to be introduced at the new hearing.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing. Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

Pending before the Court is Defendants’ Motion to Dismiss for Failure to Prosecute (“Motion”) (Doc. No. 32). In support of that Motion, they offer evidence that Plaintiff failed to appear for a scheduled deposition on February 18, 2015. (Doc. No. 32-1.) Plaintiff has not responded to Defendants’ Motion.

Based on the foregoing, the Court recommends that Defendants’ Motion be granted. Pro se litigants are bound by the same rules as lawyers, particularly with regard to discovery requirements. *See Lindstedt v. City of Granby*, 238 F.3d 933, 937 (8th Cir. 2000). Rule 37 of the Federal Rule of Civil Procedure provides that a party may be sanctioned for failing to appear at a properly noticed deposition. Fed. R. Civ. P. 37(d)(1)(A)(i). Here, based on Plaintiff’s failure to respond to Defendants’ Motion, the Court concludes that the proper sanction is dismissal of this action without prejudice.¹

IT IS, THEREFORE, RECOMMENDED THAT:

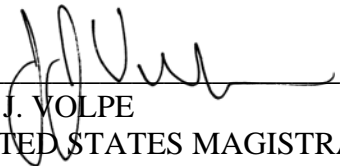
1. Defendants’ Motion to Dismiss for Failure to Prosecute (Doc. No. 32) be GRANTED.
2. Plaintiff’s cause of action be DISMISSED without prejudice due to his failure to

¹As Defendants correctly note, Plaintiff was previously apprised of his duty to diligently prosecute this action pursuant to Local Rule 5.5(C)(2). (Doc. No. 10.)

prosecute.

3. The Court certify, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from any Order adopting these recommendations would not be taken in good faith.

Dated this 13th day of April, 2015.



JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE